

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – September 12, 2003

PRESENT:

Hon. Karen Adam
Hon. Mark Anderson, Co-Chair
Hon. Bill Brotherton
Sidney Buckman
Kat Cooper
William Fabricius
Nancy Gray
William Hart
Terrill J. Haugen
Hon. Karen Johnson, Co-Chair

Jennifer Jordan
Karen Kretschman for Janet Scheiderer
Ella Maley
Hon. Dale Nielson
Kelly Spence
Steve Wolfson
Debbora Woods-Schmitt
Brian Yee
Jeff Zimmerman

NOT PRESENT:

Frank Costanza
Beverly Frame
David Norton

Steve Phinney
Ellen Seaborne
Judy Walruff for Beth Rosenberg

GUESTS:

Annalisa Alvrus
Hon. Mark Armstrong
Kathleen N. Carey
Mike Durham
Bridget Humphry
Jason Kalish
Patricia A. Medsen
Patricia Osmon
Judy Shaw
Alice Susnjara
Martin Susnjara

AZCADV
Maricopa Superior Court
Maricopa Public Defender
2nd Spoken Voice
Community Legal Services
MCAO
Community Legal Services
AZ Senate
Community Legal Services
Public Member
Public Member

STAFF:

Isabel Gillett
Marianne Hardy
Megan Hunter

Administrative Office of the Courts
House of Representatives
Administrative Office of the Courts

Sen. Anderson opened the meeting at 10:11 without a quorum present.

MODEL PARENTING TIME PLANS

LEAH PALLIN-HILL

Leah Pallin-Hill, former Superior Court Commissioner in Maricopa County, currently practicing in the mediation area, presented a summary of the Supreme Court's *Model Parenting Times Plans*. The concept to develop parenting time guidelines originally began in Maricopa County, then became a statewide, collaborative committee effort through the Administrative Office of the Courts. The Plans provide guidance to litigants and the courts in cases in which parenting time is at issue. Current research indicates that children can make attachments to many people instead of just the mother. This research was utilized to develop a tiered system in the Plans. The Plans provide a snapshot on how to raise healthy children in non-intact families. Included is a Benefits and Harms section, and other information regarding special circumstances (abuse, neglect, intense conflict, domestic violence, drug abuse), holidays, and long distance parenting.

CALL MEETING TO ORDER

Sen. Anderson called the meeting to order at 10:23 a.m. when a quorum was reached.

APPROVAL OF MINUTES

MOTION: Judge Nielsen moved to approve the minutes of the August 22, 2003 meeting as submitted. The motion was seconded by Terrill Haugen. Approved unanimously.

FAULT DIVORCE

HON. DALE NIELSON

Judge Dale Nielson, Presiding Judge, Superior Court in Navajo County, briefly discussed the issue of fault divorce vs. no fault divorce. A discussion followed about whether a workgroup should be formed to address this issue. The co-chairs will report back in October as to the formation of a workgroup.

DEDICATED FAMILY BENCH

HON. JOHN LEONARDO

HON. COLIN CAMPBELL

HON. MARK ARMSTRONG

The Committee previously invited the presiding judges of Maricopa and Pima Counties to discuss the concept of a dedicated family bench, which has been a primary topic in the Court Procedures Workgroup. The issue has been before the Committee for several years based on constituents' complaints that too many judges have been assigned to their case and that it is obvious to them that their judges do not want to be there. Rep. Johnson previously expressed her goals as follows: a family court staffed by judges who want to be there with presumptive terms of at least five years.

Maricopa County's family court is the largest part of their court system, comprising 31% of total filings. If juvenile and probate are added to that, it's almost 50% of total filings.

The Family Court in Maricopa County is understaffed with each judge currently assigned to more than 1,000 pre-decree cases. More than 44,000 family law cases were filed in Maricopa County last year. Maricopa County, to the detriment of other areas in the court, shifted judicial officers into family court to address the substantial need in that area.

Judge Leonardo, Superior Court in Pima County, asserted that few family law attorneys apply for judicial vacancies because attorneys with trial experience are generally chosen for the bench. He also suggested that a 5-year assignment may be counter-productive, and that it may be more productive to assign judges to the bench of their choice.

Judges Campbell (Maricopa), Leonardo (Pima), and Armstrong (Presiding Family Court Judge – Maricopa) discussed six options for the Committee's consideration as follows:

- a. Encourage a change of culture so that more family and juvenile law attorneys are appointed to the commissions, apply for judgeships, are interviewed and referred by the commissioners, and appointed as judges.
- b. Presiding Judges could adopt a policy requiring judges assigned to the family court to serve a presumptive term.
- c. When a judicial vacancy exists, the Presiding Judges could publicly announce the proposed first assignment of the new judge, as well as the guidelines length of this first assignment, sufficiently in advance so that all are aware of the proposed assignment before applications are due.
- d. The Supreme Court could issue an administrative order prescribing presumptive terms on the family court or providing that future family court judicial vacancies shall be announced by the Presiding Judge as stated in option (c.).
- e. The Legislature could, by statute, create a dedicated family court within the Superior Court, provided that it uses the trial court appointment commission process currently prescribed the Arizona Constitution.
- f. The Arizona Constitution could be amended by vote of the people to provide for a dedicated family bench and a dedicated civil/criminal bench with separate commissions on trial court appointments for each of the two benches.

Rep. Johnson asked Judge Leonardo if family law practitioners are applying to the bench and being overlooked simply because of their discipline. Judge Leonardo commented that it might be possible that family practitioners are discouraged from applying.

Chief Justice Jones joined the meeting and provided his thoughts to the Committee. He shares Rep. Johnson's concerns and explained that it is important to have judges on the bench who have experience in a particular field, but that is not to suggest that other judges in other fields of law are not fully adaptable and comfortable on the family law bench. Some end up liking it a great deal and staying for longer time periods. Isolating candidates by way of specialty has it's own set of problems. It may be beneficial to go for the best possible candidates. He is convinced that the majority of judges currently on

the bench are well-suited, oriented and very teachable in the area of family and juvenile law. He asserted that perhaps we should not reach out too far to find specialists in the family field, because we have good people right now. The problem is real – the family is experiencing disintegration and has to be dealt with in all branches of government. The court alone cannot solve these problems; they are prevented from doing so because of resource issues and lack of jurisdiction to solve all family problems before them.

Chief Justice Jones provided some suggestions. He stated that the Superior Court in Maricopa County is the 5th largest court in the United States with 91 separate divisions. In the last 2 ½ years there have been 36 changes in judges. As far as he can tell, virtually all complaints to the Supreme Court have come from family court bench in Maricopa County. An option for the Committee is to visit judicial nominating commission meetings. The Commission is made up of 15 citizens (10 public and 5 lawyers – appointed by state bar with approval of the Governor and confirmation of the Senate). Ten lay persons are appointed by the Governor from both political parties from all over the state. Quality people come before the commission. It would be simple to advise people of their views of rotation of judges and sitting on family court or any other division of the superior court, recognizing that when they apply for these positions they must be openly and overtly open to accept the assignments made by the presiding judge. He mentioned that the Supreme Court can do this without a rule change by simply incorporating it into court procedure. Justice Ruth McGregor presides over the Maricopa County nominating commission. Justice Michael Ryan presides over the Pima County nominating commission. Chief Justice Jones presides over the appellate nominating commission.

Senator Anderson commented that the main problem is the size of the caseload and submitted that if society did a better job of preparing for marriage and gave them better tools for making their marriage successful, the caseload would be reduced thereby making the bench a little more attractive.

CALL TO THE PUBLIC

Michael Durham, 2nd Voice, discussed criminal referrals in family court. There are problems in stabilizing the child protection system and the court system. It does not engender confidence in the system. He recommended further research to help state organizations help families.

The Committee broke for lunch.

The meeting was called to order at 12:35 p.m.

INTEGRATED FAMILY COURT (IFC)

Karen Kretschman reported on the Integrated Family Court. Maricopa and Pinal Counties have nothing new to report. Coconino County – their finance workgroup met and they explored adding a \$25 subsequent filing fee that would raise approximately \$69,000 to hire a family court coordinator. Establishing a volunteer guardian *ad litem* in divorce cases where custody is heavily contested. The idea of subsequent filing fee

didn't go over well, so they're talking about a \$50 response fee – but would only raise \$18k000 which isn't enough to hire a coordinator. BOS added a \$50 to post-adjudication cases, but goes toward automation, not IFC. They're considering approaching private foundations for funding. No established method for finding cases with cross-over IFC cases.

Judge Armstrong commented that the Maricopa pilot project is averaging three-to-four cases a week now. Since June 23, they have processed over 30 cases in IFC pilot project. The IFC cases come solely by way of referrals from judges, lawyers and litigants – most have come from judges so far.

Bill Fabricius developed a survey as discussed at the August meeting. The survey will be sent to judges and asks questions regarding the awarding of joint custody in contested custody cases where domestic violence is or is alleged to be present, and the use of orders of protection as a divorce tactic. Megan Hunter will send a copy of the survey to all of the members.

The meeting reconvened at 1:38 p.m.

WORKGROUP REPORTS

Substantive Law Workgroup – Jeff Zimmerman

The group continued discussion regarding the concept of a dedicated family bench. The proposal, as presently drafted, would require the court to look at joint custody as a first option if both parents have acted in the child's best interests. If one has not, then the judge would review the normal factors for sole custody. Discussion will continue next month.

Court Procedures – Brian Yee

The group continued discussion regarding a dedicated family bench. Specifically, the idea of getting judges who want to be on the family bench and who want to stay. The matter will be placed for continued discussion on the October agenda. Members will contact the bar to find out how the process works and if it would be possible to recommend that a member of the judicial selection commission have a family law background.

Education and Prevention – Terrill Haugen

They continue to focus on adding children as a component to the divorce education class. They discussed requiring the class for people who apply for state-provided or funded services such as TANF, child care, Section 8 housing. They also discussed requiring it for people getting a driver's license, marriage certificate or those in the immigration process.

CALL TO THE PUBLIC

No requests were received for the call to the public.

NEXT MEETING

The next meeting will be held on October 17, 2003, 10:00 am – 2:00 pm at the Judicial Education Center, 541 E. Van Buren, Suite 4-B, Silver and Turquoise Conference Rooms.

ADJOURNMENT

Senator Anderson adjourned the meeting at 1:46 p.m.